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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Attorney's Docket Number: 02037IP

Applicant: Robert Goetze
Serial No.: 10/622,270
Filed: 07/18/03

For: **PROTECTIVE CASUAL FOOTWEAR SUITABLE AS A
SLIPPER**

TO THE COMMISSIONER OF
PATENTS AND TRADEMARKS

**PETITION FOR ENLARGEMENT OF TIME FOR RESPONSE TO
ACTION DATED JULY 29, 2004**

The Petitioner hereby petitions the Honorable Commissioner, pursuant to 37 CFR 1.103(a) for an enlargement of time for response as well as protection of his employment and personal obligations upon mobilization into the United States Army Reserve and, in support thereof, would show:

1. The undersigned is a licensed patent counsel and has been so since 1980. The undersigned is also an Army Reservist and was assigned to the 350th Civil Affairs Command, APO AE 09348, from December 1, 2003, until November 15, 2004, with duty location in the International Zone (formerly Green Zone) in the United States Embassy Annex, Baghdad, Iraq, from January 25, 2004, until October 9, 2004.

2. The undersigned was counsel for the applicant and mailed the referenced application on or about November 30, 2003. On December 1, 2003, with very little

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warning the undersigned was mobilized and deployed to Baghdad for military reasons. While the orders stated the potential of a 545 day deployment, a substantially less period of time was envisioned.

3. At the time of departure I was under the belief that I would be returned to civilian life in time to respond to any patent or trademark actions which may have come in during my absence. I have had my office mail checked regularly as well as my phone messages and have managed to retain some of my business, although some will be lost. I learned of this action in March, 2004, and because of mail difficulties did not see it until early June, 2004. The circumstances are more fully described in the attached Declaration, which is herein incorporated. In summary, such establish that the situation was unavoidable through no fault of the undersigned or the applicants and for the benefit of the United States.

4. There are 2 laws which provide that Reservists who are deployed in service of their country should be protected from prejudice in their personal and business lives resulting from such service. One is the Service Members' Relief Act (P.L 108-189) which provides that civil obligations are to be stayed and that executory contractual obligations can and should be modified to avoid prejudice to the service member. The other is the Veterans' Reemployment Rights Act (38 USC Sections 4301-4334). Such provides that mobilized members of the Army Reserve and National Guard who are called to extended mobilizations MUST be restored to their employment and all rights

and benefits at the time of mobilization and given a period of time for readjustment, depending upon the length of the mobilization. In particular, the Servicemembers' Relief Act provides:

SEC. 2. <<NOTE: 50 USC app. 502.>> PURPOSE.

``The purposes of this Act are--

``(1) to provide for, strengthen, and expedite the national defense through protection extended by this Act to servicemembers of the United States to enable such persons to devote their entire energy to the defense needs of the Nation; and

``(2) to provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service.

Other sections of this act set forth that it is applicable to the undersigned (Sec. 101(1), this situation (2), and the USPTO (3)). This is reinforced by Sec. 102, 106, and 706 of the Act. Similarly, the Reemployment Rights Act, Chapter 38, United States Code, has as a statutory purpose the protection of the livelihoods of service members who are called to active service. In particular, this act provides:

Sec. 4301. - Purposes; sense of Congress

(a)The purposes of this chapter are -

(1) to encourage noncareer service in the uniformed services by eliminating or minimizing the disadvantages to civilian careers and employment which can result from such service;

(2) to minimize the disruption to the lives of persons performing service in the uniformed services as well as to their employers, their fellow employees, and their communities, by providing for the prompt reemployment of such persons

upon their completion of such service; and

(3) to prohibit discrimination against persons because of their service in the uniformed services.

(b) It is the sense of Congress that the Federal Government should be a model employer in carrying out the provisions of this chapter.

Accordingly, these provisions of federal law are meant to minimize disruption to both the service member employees and to their employers from all forms of prejudice, including that resulting from the legal obligations of the courts.

5. While on active duty, albeit involuntarily, the undersigned was not permitted to represent clients before the USPTO. This would constitute a conflict of interest. A copy of my orders and a declaration of my status are available. To require the applicant to hire new counsel would penalize him by requiring a substantial outlay of time for new counsel to learn and understand the invention and the prior art and require them to devote additional time to the process as well. This would also be contrary to the purposes of the protective statutes, which express an intent to minimize the disruption to others as well as the mobilized service member. This would also result in forcing me, the service member, to divest myself of employment and would penalize me for my military service in the civilian world upon my return.

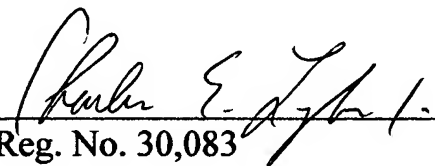
6. Having taken a short period of recuperation, I am now in the process of reviewing the months of correspondence related to my practice and in the business of regenerating my practice. Such delay is neither inordinate nor unreasonable in light of

the provisions and importance of these protections to the defense of the nation as well as the lives and interests of the parties. I have tendered a fee in the amount of the Petition (1.17(h)) plus a 3 month extension (1.17(a)(3)). I respectfully request that the 3 month extension fee not be assessed as a fee in light of the protections intended by the above acts and as a matter of fairness and that such amount be reserved for application to an issue fee, if appropriate, or refunded. The Petitioner verily believes that 37 CFR Sect. 1.103(a) to be most applicable to this matter and verily believes that the attached declaration and legal authorities establish good cause. Applicant does, nonetheless, request consideration under any other provision which would be deemed appropriate by the Commissioner, or, alternatively, request an opportunity to correct any deficiency of this request or, alternatively, request an opportunity to answer any objection or further inquiry of the Commissioner with respect to the consideration of this Petition under any authority or provision of law or regulation.

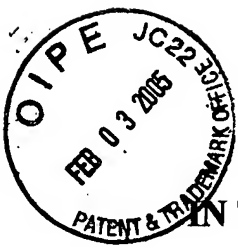
WHEREFOR the Petitioner respectfully petitions the Commissioner suspend or
waive extension and petition fees in the above-styled patent application.

Respectfully Submitted.

Charles E. Lykes, Jr.
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Tel. No. (727) 441-8308


Reg. No. 30,083

1/31/2005
Date



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TO THE COMMISSIONER OF
PATENTS AND TRADEMARKS

CERTIFICATE OF MAILING

I HEREBY CERTIFY that the foregoing **RESPONSE TO OFFICE ACTION**

DATED JULY 29, 2004 is in accordance with Title 37, Code of Federal Regulations,

§ 1.8, being deposited as first class United States mail addressed to:

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

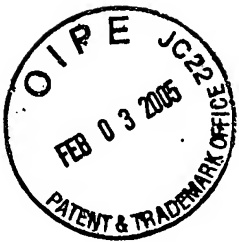
this 31st day of January, 2005.

Charles E. Lykes, Jr., Esq.

Reg. No. 30,083

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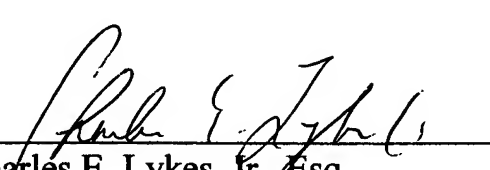
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Commissioner for Patents
P. O. Box 1450
Alexandria, Virginia 22313-1450

this 31st day of January, 2005.



Charles E. Lykes, Jr., Esq.
Reg. No. 30,083

Date